

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1956 ⁷

No. ~~59~~ 35

UNITED STATES OF AMERICA, APPELLANT,

vs.

GERALD H. SHARPNACK

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

FILED NOVEMBER 8, 1956
PROBABLE JURISDICTION NOTED JANUARY 14, 1957

Supreme Court of the United States

OCTOBER TERM, 1956

No. 559

UNITED STATES OF AMERICA, APPELLANT,

vs.

GERALD H. SHARPNACK

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

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[fol. 1] CAPTION—(Omitted in printing)

[fol. 2] **IN UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF TEXAS**

Criminal Docket 21104

THE UNITED STATES

VS.

GERALD H. SHARPNACK

18 U.S.C. 13 and Art. 535(b) and Art. 535(c)
Texas Penal Code

DOCKET ENTRIES

1956

- January 4. Presentment, filed and entered.
- January 4. Indictment, filed.
- January 6. Motion to Dismiss, filed.
- January 6. Motion to Dismiss heard and taken under advisement.
- January 6. Plea: Not guilty to 1st, 2nd & 3rd cts.
- August 14. Order Dismissing Indictment, filed and entered. (copy of above Order mailed to atty. for deft.)
- September 10. Notice of Appeal to the Supreme Court of the United States filed.
- September 14. Stipulation on Defendant's Motion to Dismiss, filed.

[fol. 3] **IN UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

Criminal No. 21104

UNITED STATES OF AMERICA

V.

GERALD H. SHARPNACK

(18 USC 13 and Art. 535(b) and Art. 535(c),
Texas Penal Code)

INDICTMENT—Filed January 4, 1956

The grand jury charges:

That on or about April 3, 1955, at Randolph Air Force Base, a military reservation within the special territorial jurisdiction of the United States, in Bexar County, Texas, within the San Antonio Division of the Western District of Texas, GERALD H. SHARPNACK did, then and there unlawfully and with lascivious intent, knowingly and intentionally, expose his private parts to Steven R. Sturm, the said Steven R. Sturm being then and there a male person under the age of sixteen years, in violation of Section 535(c) of the Penal Code of the State of Texas.

Second Count

That on or about April 3, 1955, at Randolph Air Force Base, a military reservation within the special territorial jurisdiction of the United States, in Bexar County, Texas, within the San Antonio Division of the Western District of Texas, GERALD H. SHARPNACK did, then and there, unlawfully and with lascivious intent, entice, allure, and persuade Steven R. Sturm, a male child under the age of fourteen years, to enter a room, to wit: Room No. 28, Bachelor Officers' Quarters "B", located at the aforesaid Randolph Air Force Base, for the purpose of proposing that the said Steven R. Sturm feel the sexual parts of him; the said GERALD H. SHARPNACK, in violation of Section 535(b) of the Penal Code of the State of Texas.

Third Count

That on or about April 3, 1955, at Randolph Air Force Base, a military reservation within the special territorial jurisdiction of the United States, in Bexar County, Texas, within the San Antonio Division of the Western District of Texas, GERALD H. SHARPNACK did, then and there, unlawfully and with lascivious intent, knowingly and intentionally, expose his private parts to Larry D. Pogreba, the said Larry D. Pogreba being then and there a male person under the age of sixteen years, in violation of Section 535(c) of the Penal Code of the State of Texas.

[fol. 4]

Fourth Count

That on or about April 3, 1955, at Randolph Air Force Base, a military reservation within the special territorial jurisdiction of the United States, in Bexar County, Texas, within the San Antonio Division of the Western District of Texas, GERALD H. SHARPNACK did, then and there, unlawfully and with lascivious intent, entice, allure and persuade Larry D. Pogreba, a male child under the age of fourteen years, to enter a room, to-wit: Room No. 28, Bachelor Officers' Quarters "B", located at the aforesaid Randolph Air Force Base, for the purpose of proposing that the said Larry D. Pogreba feel the sexual parts of him, the said GERALD H. SHARPNACK, in violation of Section 535(b) of the Penal Code of the State of Texas.

A true bill.

(S.) Wade R. Bedell
Foreman

Russell B. Wine
United States Attorney

[fol. 5] (File Endorsement Omitted)

[fol. 6] IN UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION.

Criminal No. 21073

UNITED STATES OF AMERICA

VS.

GERALD H. SHARPNACK

(Vio. 18 U.S.C. 13 and Art. 535(b) and Art. 535(c),
Texas Penal Code)

MOTION TO DISMISS

Now comes Defendant in the above entitled and numbered cause and moves the Court to dismiss the First

Count of the Indictment herein on the ground that this Honorable Court lacks jurisdiction of the offense alleged in said First Count for the following reasons:

Said First Count purports to charge an offense under Article 535(c), V.A.T.S. (Acts 1950, 51st Leg., 1st C.S., p. 50, Ch. 9)¹ and attempts to assimilate said purported offense under the provisions of Section 13, Title 18, United States Code (Act June 25, 1948, c. 645, 62 Stat. 683 et seq.) by reason of the allegation that said acts occurred on or about April 3, 1955, within the special territorial jurisdiction of the United States; whereas any attempt to apply provisions of a state penal law enacted *subsequent* to the passage of Section 13, Title 18, United States Code, is void as an unconstitutional delegation of the legislative power of the Congress of the United States:

II

Now comes Defendant in the above entitled and numbered cause and moves the Court to dismiss the Second Count of the Indictment herein, on the ground that this Honorable Court lacks jurisdiction of the offense alleged in said Second Count for the following reasons:

Said Second Count purports to charge an offense under Article 535(b)², V.A.T.S. (Acts 1950, 51st Leg., 1st C.S., p. 49, Ch. 8) and attempts to assimilate said purported offense under the provisions of Section 13, Title 18, United States Code (Act June 25, 1948, c. 645, 62 Stat. 683 et seq.) by reason of the allegation that said acts occurred [fol. 7] on or about April 3, 1955, within the special territorial jurisdiction of the United States; whereas any attempt to apply provisions of a state penal law enacted *subsequent* to the passage of Section 13, Title 18, United States Code, is void as an unconstitutional delegation of the legislative power of the Congress of the United States.

III

Now comes Defendant in the above entitled and numbered cause and moves this Court to dismiss the Third

¹ Incorrectly indicated in Indictment as Art. 535(b)

² Incorrectly indicated in Indictment as Art. 535(c)

Count of the Indictment herein, on the ground that this Honorable Court lacks jurisdiction of the offense alleged therein for the following reasons:

Said Third Count purports to charge an offense under Article 535(c) V.A.T.S. (Acts 1950, 51st Leg., 1st C.S., p. 50, Ch. 9)¹ and attempts to assimilate said purported offense under the provisions of Section 13, Title 18, United States Code (Act June 25, 1948, c. 645, 62 Stat. 683 et seq.) by reason of the allegation that said acts occurred on or about April 3, 1955, within the special territorial jurisdiction of the United States; whereas any attempt to apply provisions of a state penal law enacted *subsequent* to the passage of Section 13, Title 18, United States Code, is void as an unconstitutional delegation of the legislative power of the Congress of the United States.

IV.

Now comes Defendant in the above entitled and numbered cause and moves this Court to dismiss the Fourth Count of the Indictment herein, on the ground that this Honorable Court lacks jurisdiction of the offense alleged therein for the following reasons:

Said Fourth Count purports to charge an offense under Article 535(b)² V.A.T.S. (Acts 1950, 51st Leg. 1st C.S., p. 49, Ch. 8) and attempts to assimilate said purported offense under the provisions of Section 13, Title 18, United States Code (Act June 25, 1948, c. 645, 62 Stat. 683 et seq.) by reason of the allegation that said acts occurred on or about April 3, 1955, within the special territorial jurisdiction of the United States; whereas any attempt to apply provisions of a state penal law enacted *subsequent* to the passage of Section 13, Title 18, United States Code, is void as an unconstitutional delegation of the legislative power of the Congress of the United States.

¹ Incorrectly indicated in Indictment as Art. 535(b)

² Incorrectly indicated in Indictment as Art. 535(c)

WHEREFORE, Defendant prays the Court to dismiss each and every count of the Indictment.

TRUEHEART, McMILLAN, RUSSELL & WEST-

BROOK

By

713 National Bank of Commerce Bldg.

San Antonio, Texas

Attorneys for Defendant

[fol. 9] (Filed Jan. 3, 1956—Mary Hart, Clerk)

By J. E. Davis, Deputy

[fol. 10] IN UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS

SAN ANTONIO DIVISION

(Title Omitted)

STIPULATION ON DEFENDANT'S MOTION
To DISMISS—Filed September 14, 1956

Comes now the United States of America, represented herein by the United States Attorney for the Western District of Texas, and the defendant GERALD H. SHARPNACK, represented herein by his attorney, Joel Westbrook, and stipulate that the following facts are true and correct:

I.

That the defendant was indicted on December 12, 1955, in San Antonio, Criminal No. 21073 in a four-count indictment alleging violation of 18 U.S.C. 13 and Article 535(b) and Article 535(c) of the Texas Penal Code.

II.

On or about January 3, 1956, the defendant filed a motion to dismiss in said criminal numbered indictment.

III.

On January 4, 1956, an indictment was returned in San Antonio Criminal No. 21104, charging the identical vio-

lations as set out in Paragraph I herein, except that certain typographical errors were corrected in San Antonio Criminal No. 21104 which appeared in San Antonio Criminal No. 21073.

[fol. 11]

IV.

On January 6, 1956, the defendant urged a motion to dismiss. This motion to dismiss was originally filed in San Antonio Criminal No. 21073, but it was understood and agreed by the parties hereto and the Court that the motion to dismiss in San Antonio Criminal No. 21073 also applied with equal force and effect to San Antonio Criminal No. 21104.

SIGNED this, the 11th day of September, 1956.

(S.) Joel Westbrook
Joel Westbrook
Attorney for Defendant

(S.) Russell B. Wine
Russell B. Wine
United States Attorney

[fol. 12] (File Endorsement Omitted)

[fol. 13] IN UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Criminal No. 21104

UNITED STATES OF AMERICA

V.

GERALD H. SHARPNACK

ORDER DISMISSING INDICTMENT--Filed August 14, 1956

The Court, after having considered the defendant's motion to dismiss the indictment in the above cause, and considering the briefs submitted by counsel herein, is of the opinion that the defendant's motion should be granted, for the reason that Congress may not legislatively assimilate and adopt criminal statutes of a state which are

enacted by the state subsequent to the enactment of the Federal Assimilative Statute.

It is further the opinion of this Court that Section 13, Title 18, United States Code, enacted in 1948, wherein it assimilates and adopts said criminal statutes enacted by the state subsequent to the enactment of said section, to-wit: Articles 535(b) and 535(c) of the Texas Penal Statutes, enacted in 1950, upon which all four counts of this indictment are predicated, is a delegation of Congress' legislative authority to the states in violation of the Constitution of the United States.

For the reasons aforesaid, the indictment in this cause is **DISMISSED**.

SIGNED this, the 10 day of August, 1956.

(S.) Ben H. Rice, Jr.

Ben H. Rice, Jr.

United States District
Judge

ENTERED: Minute Volume X-1, Page 787.

[fol. 14] (File Endorsement Omitted)

[fol. 15] IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

(Title Omitted)

NOTICE OF APPEAL

TO THE SUPREME COURT OF THE UNITED STATES—

Filed September 10, 1956

I. Notice is hereby given that the United States appeals to the Supreme Court of the United States from the order entered August 14, 1956, dismissing the indictment which charged violations of 18 U.S.C. 13 and Texas Penal Code, Articles 535(b) and (c).

This appeal is taken pursuant to 18 U.S.C. 3731.

II. The clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. Transcript of docket entries
2. Indictment
3. Motion to dismiss the indictment, made in Cr. No. 21073, and stipulation making said motion applicable in this case, Cr. No. 21104
4. Order of the district court dismissing the indictment
5. Notice of appeal

[fol. 16] III. The following question is presented by this appeal:

18 U.S.C. 13 provides that any act or omission committed within the special maritime and territorial jurisdiction of the United States which, although not made punishable by an act of Congress, would be punishable if committed within the jurisdiction of the state in which such place is situated "by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment." The question is whether this statute constitutes an unconstitutional delegation of the legislative power of Congress in so far as it assimilates state laws enacted subsequent to the date of its enactment in 1948.

(S.) Russell B. Wine
United States Attorney
Western District of Texas

[fol. 17] (File Endorsement Omitted)

[fol. 18] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 19]

SUPREME COURT OF THE
UNITED STATES

No. 559 —, October Term, 1956

(Title Omitted)

APPEAL from the United States District Court for the Western District of Texas.

ORDER NOTING PROBABLE JURISDICTION—January 14, 1957

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary calendar.